

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

KURT SCHEUERMAN, individually and on behalf of
of all others similarly situated,

Plaintiff,

v.

NESTLE HEALTHCARE NUTRITION, INC.,

Defendant.

: Hon. Faith S. Hochberg, U.S.D.J.

: Civil Case No. 10-3684 (FSH)(PS)

: **ORDER**

: Date: July 16, 2012

MARIA JOHNSON, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

NESTLE HEALTHCARE NUTRITION, INC.,

Defendant.

: Hon. Faith S. Hochberg, U.S.D.J.

: Civil Case No. 10-5628 (FSH)(PS)

: **ORDER**

: Date: July 16, 2012

HOCHBERG, District Judge;

This matter comes before the Court upon Defendant Nestle Healthcare Nutrition, Inc.’s (“Nestle”) motion to dismiss portions of the Amended Consolidated Class Action Complaint pursuant to Fed. R. Civ. P. 12(b)(6) [Docket No. 124], Nestle’s Motion for Summary Judgment filed pursuant to Fed. R. Civ. P. 56 and Local Civil Rule 56.1 [Docket No. 167], and Plaintiffs’ Motion for Class Certification [Docket No. 169]; and

for the reasons set forth in this Court’s Opinion of July 16, 2012;

IT IS on this 16th day of July, 2012,

ORDERED that Defendant Nestle Healthcare Nutrition, Inc.'s Motion to Dismiss is **GRANTED** as to Plaintiffs' UTPCPL claim (Count VII) only; and

IT IS FURTHER ORDERED that Nestle's Motion for Summary Judgment is **GRANTED** in part and **DENIED** in part; and

IT IS FURTHER ORDERED that Plaintiffs' NJCFA (Count I), Negligent Misrepresentation (Count II), UCL (Count IV), FAL (Count V), and CLRA (Count VI) claims are **ADJUDGED** in favor of Nestle; and

IT IS FURTHER ORDERED that Nestle's motion for summary judgment is **DENIED** as to Plaintiffs' Breach of Express Warranty claim (Count III); and

IT IS FURTHER ORDERED that the parties shall jointly contact Magistrate Judge Schwartz within seven (7) days of the issuance of this Order with a proposed schedule of dates for the pretrial deadlines stayed by the Court's June 13, 2012 Order; and

IT IS FURTHER ORDERED that this action will be referred to mediation, consistent with Local Civil Rule 301.1, on the Breach of Express Warranty claim (Count III). The parties shall submit a list of three mediators on consent by **July 24, 2012**. If the parties cannot agree on a list of mediators, the Court will choose a mediator from the list of Court-designated mediators. Mediation shall commence no later than September 15, 2012 and shall conclude by October 15, 2012. All deadlines, including the stayed deadlines to be reset by Judge Schwartz, will remain in place during mediation.

The Clerk of the Court is directed to terminate the motions: Docket Nos. 124 and 167.

/s/ Faith S. Hochberg
Hon. Faith S. Hochberg, U.S.D.J.